

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 3
Mtg. Date September 19, 2017
Dept. Development Services Department

Item Title: **Public Appeal to Consider Appeal No. AA1-700-0004 Regarding the Denial of Zoning Clearance No. ZC1-700-0016 Continued from August 15, 2017; a Request to Apply for a Conditional Use Permit to Establish a Medical Marijuana Dispensary at 6915 North Avenue in the General Commercial Zone.**

Staff Contact: **David De Vries, Development Services Director**

Recommendation:

1. Continue the public hearing from August 15, 2017; and
2. Adopt a Resolution (**Attachment B**) upholding the Development Services Director's determination to deny ZC1-700-0016, a request to apply for a conditional use permit to establish a medical marijuana dispensary at 6915 North Avenue in the General Commercial Zone.

Item Summary:

On June 13, 2017, the Development Services Director (Director) denied Zoning Clearance Application No. ZC1-700-0016, a request to establish a medical marijuana dispensary (MMD) on a 0.53 acre shopping center property located at 6915 North Avenue. The application was denied because the proposed MMD would be at a property located within 1,000 feet of three State-licensed family daycares. The City of Lemon Grove obtained a confidential list of family daycare homes from the Department of Social Services (DSS), subject to the provision that the list be kept confidential. The appellant, Mr. Christopher O. Williams, subsequently filed an appeal and request for public hearing, stating the licensed daycare home location was not disclosed and therefore the applicant has not been put on notice for the reason for denial. Also, the appellant's attorney believes the separation requirements do not apply and has provided different reasons (**Attachment G**). Staff's response to the appellant and their attorney's statements and DSS confidentiality requirements related to family daycare homes are provided herein (**Attachment A**). This public hearing was continued from August 15, 2017.

Fiscal Impact:

None.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorically Exempt | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|---|--|---|
| <input type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Tribal Government Consultation Request |
| <input checked="" type="checkbox"/> Notice published in local newspaper | <input checked="" type="checkbox"/> Notice to property owners within 500 ft. | |

Attachments:

- A. Staff Report
- B. Resolution of Denial
- C. Lemon Grove Municipal Code Section 17.32.090
- D. Draft City of Lemon Grove Medical Marijuana Zoning Map
- E. ZC1-700-0016 Application Form
- F. Staff Denial Letter for ZC1-700-0016
- G. AA1-700-0004 Appeal Form and Appellant's Counsel's Opinions (updated)
- H. Map Showing Distance Between Uses
- I. Staff Acknowledgment Letter for AA1-700-0004
- J. Excerpt from DSS Frequently Asked Questions Publication
- K. Information Request Letter from City to DSS, dated February 9, 2017
- L. Response Letter from DSS to City dated February 21, 2017
- M. Staff Pictures of 7106 Westview Place slope

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 3
Mtg. Date September 19, 2017

Item Title: **Public Appeal to Consider Appeal No. AA1-700-0004 Regarding the Denial of Zoning Clearance No. ZC1-700-0016 Continued from August 15, 2017; a Request to Apply for a Conditional Use Permit to Establish a Medical Marijuana Dispensary at 6915 North Avenue in the General Commercial Zone.**

Staff Contact: David De Vries, Development Services Director

Background:

This appeal hearing was scheduled for the August 15, 2017 City Council meeting. At the public hearing, the hearing was continued by the City Council to September 19, 2017 at the applicant's request.

In November 2016, voters in the City of Lemon Grove passed Measure V, an initiative removing the City's prohibition of medical marijuana dispensaries (MMDs) and establishing performance standards and a permit process by which MMDs may be established. Measure V was subsequently codified in Chapter 17.32 of the Lemon Grove Municipal Code (**Attachment C**). The permit process for MMDs requires approval of a conditional use permit (CUP), and the performance standards prohibit MMDs on properties within 1,000 feet of certain protected uses, including licensed daycare facilities. See Lemon Grove Municipal Code Section 17.32.090.

In order to identify and map the location of protected uses, staff relied upon on a variety of resources including, but not limited to, the website for the California Department of Social Services (DSS), which is the licensing agency for daycare throughout the State of California. As part of this research, staff discovered that DSS does not disclose the addresses of licensed family daycare homes to the general public. Such uses are conducted in private residential settings where there is an expectation of privacy and where the dissemination of such information is restricted by law. This policy is explained in the DSS Frequently Asked Questions publication (**Attachment J**). Based on a request from the City, DSS staff supplied a list of family daycare homes and their addresses to the staff at the City of Lemon Grove, provided that City staff would not disclose the list to the general public (**Attachments K and L**). To provide the public with a map identifying potential locations for MMDs, while protecting the locations of family daycare homes, City staff created a draft map with 1,000 foot buffers around the parcels where known protected uses are located. Staff then made those buffers opaque to obscure the underlying parcel geography (**Attachment D**).

On March 7, 2017, staff presented a report to City Council describing the recommended draft review procedures and draft conditions of approval for requests to establish MMDs. Staff also presented the draft Medical Marijuana Zoning Map it had created. The review procedures include using the Zoning Clearance (ZC) process as the initial step in screening and reviewing of MMD applications. Complete ZC applications for sites which meet the zoning criteria and distance restrictions described in LGMC Chapter 17.32 and which include all required application materials will be deemed complete, and the applicants may then submit for CUP approval by the City Council. ZC applications for sites that do not meet the specified criteria are denied by staff. Staff's decision to deny any application is subject to appeal to the City Council, pursuant to LGMC Section 17.28.020(I).

On June 1, 2017, the appellant filed ZC1-700-0016, an application to apply for a conditional use permit to establish a MMD at the subject property (**Attachment E**). Prior to accepting the

Attachment A

application, staff checked the location of the project site on the Draft Medical Marijuana Zoning Map and determined it was ineligible for a dispensary. Staff then informed the appellant that the proposed project site was within 1,000 feet of a protected use, and therefore staff would have no option but to deny the ZC application.

The appellant chose to file the ZC application despite staff's admonishment, and on June 13, 2017, the Development Services Director denied ZC1-700-0016 (**Attachment F**). On June 21, 2017, the appellant filed AA1-700-0004, an administrative appeal of the Director's decision (**Attachment G**). The appeal states "The denial letter does not state the licensed daycare home and therefore has not put the applicant on notice for the reason for denial. Further, however, the applicant will provide additional details once the specific sensitive use has been identified by the City." Also included in this attachment is the opinion of the appellant's attorney submitted on June 1, 2017.

On July 25, 2017, staff contacted the three family daycare home operators via a phone call and written letter and informed them that their locations would be disclosed to the appellant. One of the daycare operators informed staff that an employee stated they had been contacted by a third party regarding the daycare operations at the subject property in order to facilitate the establishment of a dispensary. On this same day, staff sent a letter to the appellant acknowledging receipt of the appeal, informing him that the appeal hearing date would be August 15, 2017, and advising him to submit any additional information he wished to provide prior to the hearing (**Attachment I**). In the same letter, out of an abundance of caution and in order to provide a full and open opportunity for the appellant to understand the reason staff denied the zoning clearance permit, and to allow the appellant to respond accordingly, staff disclosed that the protected use affecting the subject property were three licensed family daycare facilities located 853 feet southeast of the subject property with the address of the facilities provided. See the attached exhibit prepared by staff depicting the location of the site in relation to the licensed daycare facilities (**Attachment H**).

On August 14, 2017, the City Council received a letter (**included in Attachment G**) from the appellant's attorney, Ms. Gina Austin, that was added to the public record for the August 15, 2017 public hearing. Ms. Austin states that the slope and barbed wire west of the family daycares that are within 1,000 feet of the subject property are significant natural and constructed barrier. It's important to note that the slope and the fence are almost entirely on the daycare property based on GIS research. The daycares are located in a residential zone and barbed wire is prohibited in residential zones. If we were to receive a complaint regarding barbed wire at the daycare property, they would be in code enforcement receiving citations and fines until all of the barbed wire is removed. Also, during a site visit on August 14, 2017, the daycare operator in one of the units affirmed they are a licensed daycare and attested to the other two facilities also being in operation. The operator I spoke with also said that prior to the barbed wire being constructed, people would go up and down the slope regularly to avoid going all the way around along Massachusetts Ave. That same day, I walked up and down the slope to affirm the feasibility of access on the slope and found no difficulties going either direction (pictures are included in **Attachment M**). Lastly, on page 4 of Ms. Austin's letter, Ms. Austin contests that that they hired a private investigator, but the investigator contests that there are no children or signs of a daycare present at a facility located at 7103 Westview Place which is not the address where the daycare operations are located.

As of September 13, 2017, no additional information has been received.

Discussion:

The purpose of this appeal is to determine whether a MMD is allowed to proceed with a conditional use permit application based on a determination that the subject property is within 1,000 feet of a

Attachment A

protected use, in this instance a licensed daycare facility. Staff contends that it has discovered appropriate evidence and made appropriate measurements to justify that there is a licensed daycare facility within 1,000 feet of the subject property. The appellant contends that the subject property is not within 1,000 feet of the protected uses, but later contends that there are significant barriers between the daycares that are located within 1,000 feet of the subject property.

As stated above, City staff contacted the State to obtain information about the location of each licensed family daycare home. Under the Public Records Act ("PRA"), the City is bound to protect information forwarded under these conditions. The relevant PRA section states as follows:

Government Code Section 6254.5. [Excerpts only]

Notwithstanding any other law, if a state or local agency discloses a public record that is otherwise exempt from this chapter, to a member of the public, this disclosure shall constitute a waiver of the exemptions specified in Section 6254 or 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment. ...

This section, however, shall not apply to disclosures: ...

(e) Made to a governmental agency that agrees to treat the disclosed material as confidential. **Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes that are consistent with existing law.**

Typically, once a confidential record is disclosed, the disclosure constitutes a waiver of the privilege to keep the record confidential. However, there is a specific exemption when confidential records are shared between agencies. The City is bound by the State's confidentiality request. The State of California only agreed to share its list of licensed family daycare homes, on the condition that the City keep the list confidential. The City does not have the right to turn over the licensed daycare list to any person, however, individual daycare operations may be disclosed out of an abundance of caution and in order to provide a full and open opportunity for the appellant to understand the reason staff denied the zoning clearance permit, and to allow the appellant to respond accordingly.

Notwithstanding the confidentiality of the information shared with the City by DSS, applicants may have options in locating family daycare homes including: 1) canvassing their proposed location for other businesses which may prohibit their siting; 2) conducting internet research regarding daycare facilities that advertise on the internet; and 3) phoning DSS regarding daycare facilities in their community.

Regarding natural and constructed barriers, Measure V states "measurement is made between the closest property lines of the premises in which the regulated uses and protected uses are located." Measure V further states "the measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access." Measure V only references freeways and flood control channels as examples of constructed barriers. A freeway is defined as "an express highway, especially one with controlled access." Flood control is defined as "the act or technique of controlling river flow with dams, dikes, artificial channels, etc., so as to minimize the occurrence of floods." Staff

Attachment A

contends that these constructed barriers only include major linear obstructions traversing for miles where pedestrian access is prohibited or severely limited and staff further contends that a minor slope that is accessible to pedestrians and constructed barriers like fences and unpermitted barbed wire are not constructed barriers in accordance with Measure V. |

Public Information:

The Notice of Public Hearing for this item was published in the August 3, 2017 edition of The East County Californian, and mailed to all property owners within 500 feet of the subject property.

As of September 13, 2017, the City has received no responses to the Notice of Public Hearing. At the time of the public hearing, staff will provide the City Council with any additional written comments that may be received after distribution of the staff report.

Conclusion:

Staff recommends that the City Council conduct a public hearing and adopt a Resolution (**Attachment B**) upholding the Development Services Director determination to deny ZC1-700-0016, and denying a request to apply for a conditional use permit to establish a MMD at 6915 North Avenue.

RESOLUTION NO. []

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE UPHOLDING THE DEVELOPMENT SERVICES DIRECTOR'S DETERMINATION TO DENY A REQUEST TO APPLY FOR A CONDITIONAL USE PERMIT TO ESTABLISH A MEDICAL MARIJUANA DISPENSARY AT 6915 NORTH AVENUE (ZC1-700-0016), LEMON GROVE, CALIFORNIA []

WHEREAS, on November 8, 2016, voters in the City of Lemon Grove passed Measure V, an initiative removing the City's prohibition of medical marijuana dispensaries and establishing performance standards and a permit process by which medical marijuana dispensaries may be established; and

WHEREAS, Measure V includes the adoption of Lemon Grove Municipal Code Chapter 17.32 which prohibits the establishment of medical marijuana dispensaries within 1,000 feet of certain protected uses, including schools and licensed daycare facilities; and

WHEREAS, Measure V states "measurement is made between the closest property lines of the premises in which the regulated uses and protected uses are located." Measure V further states "the measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access." Measure V only references freeways and flood control channels as examples of constructed barriers. A freeway is defined as "an express highway, especially one with controlled access." Flood control is defined as "the act or technique of controlling river flow with dams, dikes, artificial channels, etc., so as to minimize the occurrence of floods." Examples of constructed barriers only include major linear obstructions traversing for miles where pedestrian access is prohibited or severely limited; and

WHEREAS, City staff requested and obtained a confidential list of licensed family daycare homes from the California Department of Social Services; and

WHEREAS, in order to obtain the confidential list of family daycare homes, City of Lemon Grove staff agreed to keep the information confidential; and

WHEREAS, on March 13, 2017, the City received a confidential list from the California Department of Social Services noting at least three such facilities are within 1,000 feet of 6915 North Avenue; and

WHEREAS, on June 1, 2017, after being informed verbally by City staff that the subject property was within 1,000 feet of a licensed daycare facility, and that submittal of a zoning clearance application would result in a denial, the appellant (Christopher O. Williams) filed ZC1-700-0016, an application to apply for a conditional use permit to establish a MMD at 6915 North Avenue, Lemon Grove, CA; and

WHEREAS, on June 13, 2017, the Development Services Director denied ZC1-700-0016 because the proposed project site is located within 1,000 feet of a State-licensed daycare facility; and

WHEREAS, on June 21, 2017, the appellant filed an administrative appeal of the Director's decision (AA1-700-0004), stating that the denial letter does not state the licensed daycare home and therefore has not put the applicant on notice for the reason for denial there are no schools or licensed day care facilities within 1,000 feet of the subject property; and

Attachment B

WHEREAS, Government Code Section 6254.5(e) specifically exempts government agencies from the requirement to disclose confidential information that was shared between agencies under an agreement to maintain the confidentiality of said information; and

WHEREAS, City staff disclosed in writing the address of the three existing daycare facilities on July 25, 2017 as evidenced by the letter attached to the Agenda Item Summary as Attachment "I"; and

WHEREAS, the appellant has failed to show that their facility is greater than 1,000 feet from three California-licensed daycare facilities; and

WHEREAS, on August 14, 2017, the Development Services Director walked up and down the slope west of the daycare property within 1,000 of 6915 North Ave.; and

WHEREAS, barbed wire is not a permissible fence material in the Residential Medium/Zone in accordance with Section 17.24.050 of the Municipal Code; and

WHEREAS, a minor slope that is accessible to pedestrians and constructed barriers like fences and unpermitted barbed wire are not constructed barriers in accordance with Measure V; and

WHEREAS, on August 15, 2017, the City Council held a duly noticed public hearing to consider AA1-700-0004, an appeal of the Development Services Director's determination to deny ZC1-700-0016 and at the request of the applicant, the City Council continued the public hearing to September 19, 2017; and

WHEREAS, on September 19, 2017, the City Council held a continued public hearing to consider AA1-700-0004, an appeal of the Development Services Director's determination to deny ZC1-700-0016; and

WHEREAS, the appeal of this determination is not a project and is not subject to the environmental review requirements of the California Environmental Quality Act (CEQA); and

NOW, THEREFORE, INCORPORATING THE ABOVE STATEMENTS HEREIN, BE IT RESOLVED that the City Council of the City of Lemon Grove hereby:

1. Denies Christopher O. Williams' Administrative Appeal No. AA1-700-0004 based on the above-findings; and
2. Upholds the Development Services Director's June 13, 2017 determination to deny Zoning Clearance No. ZC1-700-0016, a request to apply for a conditional use permit to operate a medical marijuana dispensary, at 6915 North Avenue, Lemon Grove, CA.

/////
/////

17.32.090 Medical marijuana dispensary regulations.

A. *Zones.* *Dispensaries* may be established by conditional use permit in the heavy commercial (HC), limited commercial (LC), general commercial (GC) and light industrial (LI) zones and subject to the distance requirements. *Dispensaries* are prohibited in mixed-use zones (Downtown Village Specific Plan and Central Commercial) and all residential zones (RLM, RL, RM, RMH).

B. *Distance Requirements.* An application may be submitted provided the proposed facility meets the required distance measurements. For purposes of measurements, all *dispensaries* are considered *regulated uses* and public parks as defined at Section 12.20.030 of Lemon Grove Municipal Code, playgrounds as defined at Section 18.28.020, subdivision (v), of the Lemon Grove Municipal Code, licensed day care facilities as defined at Section 17.08.030 of Lemon Grove Municipal Code, schools as defined at California Health and Safety Code Section 11362.768, subdivision (h), and alcohol and substance abuse treatment centers are considered *protected uses*. Measurement is made between the closest property lines of the *premises* in which the *regulated uses* and *protected uses* are located. A regulated use must not be:

1. Within one thousand feet of any other regulated use which is located either inside or outside the jurisdiction of the city,
2. Within one thousand feet from any protected use which is located either inside or outside the jurisdiction of the city.

The measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access.

C. *Standards.*

1. *Background Check Required for Directors and Employees.* The *director* and employees of a *dispensary* must obtain a LiveScan background check through the California Department of Justice or the San Diego County sheriff's department prior to employment. *Directors* convicted of a serious felony, as defined in California Penal Code Section 1192.7, subdivision (c), and Health and Safety Code Section 11359 (Possession for sale) within the previous ten years shall not be eligible for a license. Other potential collective employees and volunteers convicted of the crimes identified in this section in the previous five years are ineligible for employment or participation. If during employment with the *dispensary*, a *director* or employee is convicted of a crime identified in this section shall be immediately dismissed from employment or required to resign as a corporate board member or officer. For purposes of this section, a conviction in another state that would have been a conviction equivalent under California law to those convictions specified in this section will disqualify the person from employment or volunteering at the *dispensary*.

2. *Security Personnel Required.* *Dispensaries* shall have at least one uniformed security guard on duty during operating hours that possess a valid Department of Consumer Affairs "Security Guard Card."

3. *Community Relations Liaison Required.* *Dispensaries* shall designate a community relations liaison (liaison) who shall be at least eighteen years of age. The liaison may also be the *director* of the *dispensary*. To address community complaints or operational problems with the *dispensaries*, the individual designated as the community relations liaison shall provide his or her name, phone number and email address to the following:

- a. Lemon Grove city manager;

Attachment C

b. San Diego County sheriff's department personnel supervising law enforcement activity in Lemon Grove;

c. All neighbors within one hundred feet of the *dispensary*.

4. Inspection of *Premises*. City code enforcement officers, San Diego sheriff's department staff, and any other employee of the city requesting admission for the purpose of determining compliance with the standards set forth in this section shall be given access to the *premises*. City and sheriff staff shall not retain information pertaining to individual patient records viewed during an inspection, and information related to individual patients shall not be made public. Inspectors will give reasonable notice of a scheduled inspection. Unannounced inspections of a *dispensary* may occur if city or sheriff's department staff have probable cause that the collective is violating the law.

5. Inspection Requirements. In order to facilitate verification that a *dispensary* operates pursuant to state and local laws, the following records must be maintained at the *premises* at all times and available for inspection by city code enforcement officers, San Diego sheriff's department staff, and any other employee of the city:

a. Client Records. The *dispensary* shall keep a record of its clients. The record shall include the following and shall be maintained for a two-year period:

i. *Qualified patient* member's name, name of *primary caregiver* when appropriate, and name of *licensed physician* recommending use of *medical marijuana* for the member.

b. *Medical marijuana* Records. *Dispensary* shall keep a record of its *medical marijuana* transactions. The following records shall be maintained for a two-year period and labeling shall occur as specified:

i. A record identifying the source or sources of all *medical marijuana* currently on the *premises* or that has been on the *premises* during the two-year period preceding the current date. The record shall include the name of the cultivator or manufacturer and the address of the cultivation or manufacturing location.

ii. All *medical marijuana* at the *premises* must at all times be physically labeled with information that will allow for identification of the source of the *medical marijuana*.

iii. All *medical marijuana* at the *premises* shall be physically labeled with the monetary amount to be charged.

c. Financial Records. *Dispensary* shall maintain records of all transactions involving money and/or *medical marijuana* occurring at the *premises*. Records shall be maintained for a two-year period preceding the current date.

d. Employee Records. *Dispensary* shall maintain a record of each employee/volunteer and *director*. The record shall include name and background check verification. Records shall be maintained for a two-year period following the end of an employee's employment or *director's* relationship with the *dispensary*.

6. *Operations manual*. The application for a conditional use permit shall include a detailed *operations manual* including, but not necessarily limited to, the following information:

a. Authorization for the city, its agents and employees, to seek verification of the information contained within the application;

b. A description of the staff screening process including appropriate background checks;

c. The hours and days of the week the *dispensary* will be open;

Attachment C

- d. Text and graphic materials showing the site, floor plan and facilities of the *dispensary*. The material shall also show adjacent structures and land use;
 - e. A description of the security measures located on the *premises*, including, but not limited to, lighting, alarms, and automatic law enforcement notification;
 - f. A description of the screening, registration and validation process for *qualified patients*;
 - g. A description of *qualified patient* records acquisition and retention procedures;
 - h. The process for tracking *medical marijuana* quantities and inventory controls employed, including the source of *medical marijuana* (on-site cultivation, processing, or plant material, or processed products, received from outside sources);
 - i. Procedures to ensure accurate record keeping, including protocols to ensure that quantities purchased do not suggest re-distribution;
 - j. Other information required by the development services director.
7. Operating Standards. *Dispensaries* shall comply with all of the following operating standards. In addition to these standards, the *dispensaries* shall comply at all times with conditions outlined in the approved conditional use permit and the operational manual.
- a. Dispensing *medical marijuana* to an individual *qualified patient* or *primary caregiver* more than once a day is prohibited;
 - b. *Dispensaries* shall only dispense *medical marijuana* to an individual *qualified patient* or *primary caregiver* who has a valid, verified *licensed physician*'s recommendation, and if appropriate, a valid *primary caregiver* designation. The *dispensary* shall verify that the *licensed physician*'s recommendation is current and valid;
 - c. On-site evaluation by a *licensed physician* for the purposes of obtaining a qualified status is prohibited;
 - d. *Dispensaries* shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the *dispensary*. The client rules and/or regulations shall include, but are not limited to:
 - i. Each building entrance to a *dispensary* shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming *medical marijuana* on the *premises* or in the vicinity of the *dispensary* is prohibited unless specifically authorized within the governing conditional use permit.
 - ii. The building entrance to a *dispensary* shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen are precluded from entering the *premises*.
 - iii. The hours of operation for an authorized *dispensary* shall be limited to between eight a.m. to eight p.m. or as specified within the conditional use permit.
 - iv. *Dispensaries* shall not permit the use or consumption of *medical marijuana* on-site unless specifically authorized under the conditional use permit.
 - v. *Dispensaries* shall not permit the on-site display of unprocessed marijuana plants or representations of marijuana plants in any areas visible to the public;
 - vi. All signage for *dispensaries* shall require a sign permit from the city prior to installation. Signage shall not include any terminology (including slang) or symbols for marijuana.

Attachment C

vii. *Dispensaries* shall only permit the distribution of *medical marijuana* plant material and *medical marijuana* manufactured products from licensed sources as allowed by the approved conditional use permit. Such distribution shall be limited to *qualified patients* or *primary caregiver*;

e. *Dispensaries* shall maintain on the *premises* an on-site training curriculum capable of meeting employee, agents and volunteer training needs. The minimum training curriculum shall include professional conduct, ethics, and state and federal laws regarding patient confidentiality; specific procedural instructions for responding to an emergency, including robbery or violent incident.

f. *Dispensaries* shall maintain all necessary permits, and pay all appropriate taxes. *Dispensaries* shall also provide invoices to cultivators and manufacturers to ensure tax liability responsibility;

g. *Dispensaries* shall implement procedures as outlined in their approved *operations manual*;

h. *Dispensaries* shall submit an “annual performance review report” for review and approval by the development services director. The “annual performance review report” is intended to identify effectiveness of the approved conditional use permit, *operations manual*, and conditions of approval, as well as any proposed modification to procedures as deemed necessary. The development services director may review and approve amendments to the approved “*operations manual*”; and the frequency of the “annual performance review report.” *Medical marijuana* cultivation and dispensing monitoring review fees pursuant to the current Master Fee Schedule shall accompany the “annual performance review report” for costs associated with the review and approval of the report.

i. *Dispensaries* shall maintain twenty-four-hour recorded video surveillance of the *premises*. Recordings shall be retained for thirty days for inspection by city staff. City staff must provide valid cause for viewing video surveillance. City staff must ensure that patient privacy is safeguarded. Video surveillance will not be shared with law enforcement except when formally requested as part of a law enforcement investigation directly involving the *dispensary*.

j. Sales of alcoholic beverages are prohibited.

k. Sales of tobacco and tobacco products are prohibited.

l. Sales of drug paraphernalia are prohibited.

m. The location of the *dispensary* shall include the installation of a centrally monitored alarm system

n. Lighting shall be installed to adequately light the exterior and interior of the *dispensary premises* while in conformance with Section 17.28.080.

8. Source of *Medical marijuana*. A *dispensary* shall only dispense marijuana from the following sources and this information shall be included in the *operations manual*:

a. On-Site Cultivation for Authorized *Dispensary*. If the conditional use permit authorizes limited, on-site *medical marijuana* cultivation at the *dispensary*, on-site cultivation shall be considered an accessory use and shall not exceed twenty-five percent of the *dispensaries*’ total floor area and in no case exceed one thousand five hundred square feet. In addition to these area limitations, the accessory use shall conform to the specific zone regulations, Section 17.24.060 Accessory Buildings and Uses, Section 17.32.100 of this title, and applicable Building and Fire Codes. The *operations manual* shall include information regarding the on-site cultivation including, but not limited to:

i. Description of measures taken to minimize or offset energy use from the cultivation or processing of *medical marijuana* on-site; and

ii. Description of chemicals stored or used; and




Attachment C

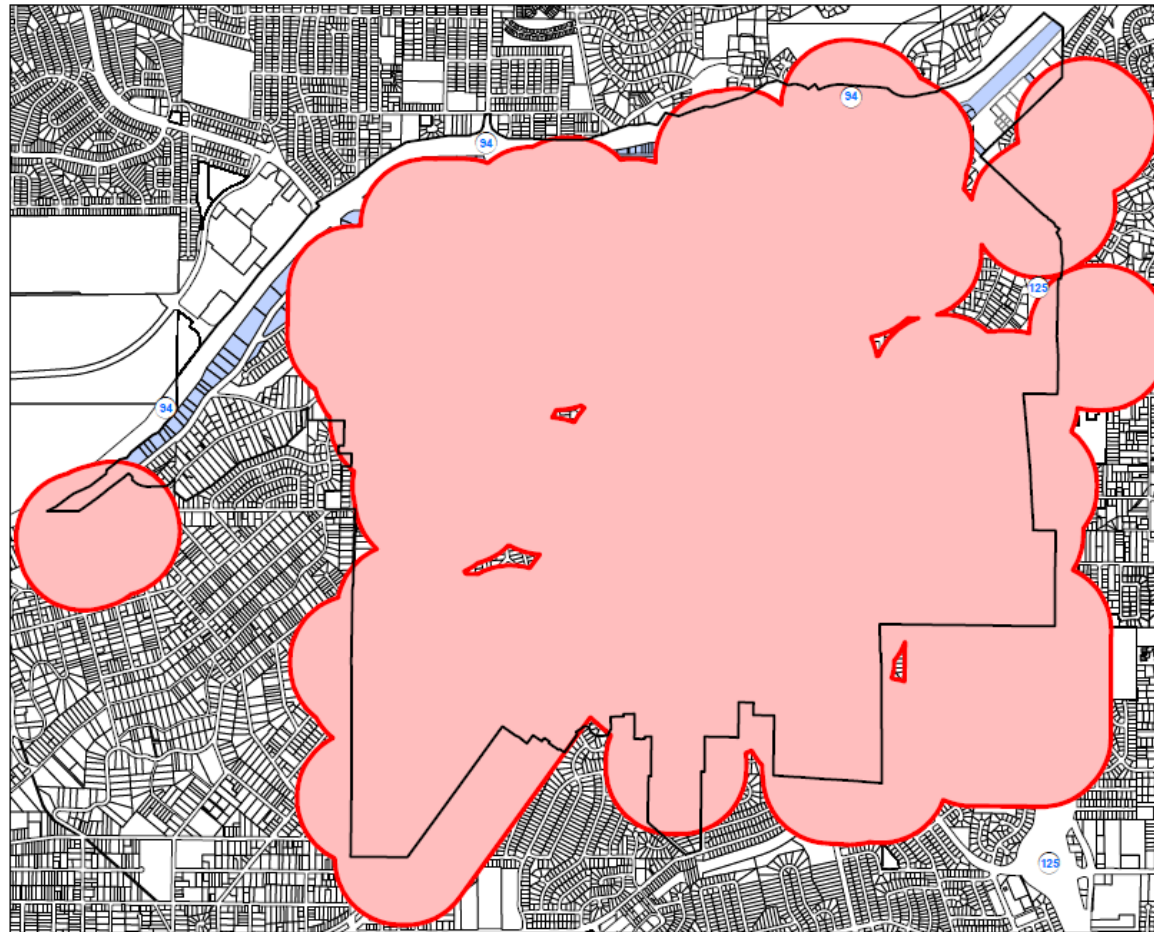
iii. Description of any effluent discharged into the city's wastewater and/or stormwater system;

b. Licensed External Source. Until one year following the date when the California State Bureau of Medical Marijuana Regulation begins accepting applications for licenses, or sooner, if such a deadline is set by the Bureau, *dispensaries* shall source their *medical marijuana* from cultivators and manufacturers that have obtained a local business license or equivalent document showing that the organization is operating in zoning and regulatory compliance from another jurisdiction for the *medical marijuana* cultivation or manufacturing. One year from the date that the California State Bureau of Medical Marijuana Regulation begins accepting applications for licenses, or sooner, if such a deadline is set by the Bureau, all sources of *medical marijuana* or *medical marijuana* products sold in a *dispensary* must also have a state license for their *medical marijuana* activities. (Ord. 443 § 1, 2016)

Draft Lemon Grove Medical Marijuana Dispensary Zoning


Legend

-  Lemon Grove Boundary
-  Zones Permitting Dispensaries (With Approved CUP)
-  1,000 Foot Buffer Around Protected/Regulated Uses (Dispensaries Prohibited Inside the Buffers)



NOTES:

- 1) This map may not include all protected uses, specifically those in surrounding jurisdictions.
- 2) To ensure privacy for family daycare homes, this map intentionally obscures the exact locations of protected uses.
- 3) Map last updated on July 5, 2017

	<h2 style="margin: 0;">PLANNING PERMIT APPLICATION</h2> <p style="margin: 5px 0;">Development Services Department / Planning Division 3232 Main Street, Lemon Grove, CA 91945 Phone: 619-825-3805 Fax: 619-825-3818 www.lemongrove.ca.gov</p>
<p>APPLICATION REQUEST- SELECT ALL THAT APPLY – (SUBJECT TO OTHER PERMIT REQUIREMENTS)</p>	
<p><input checked="" type="checkbox"/> Zoning Clearance (ZC)</p> <p><input type="checkbox"/> Pre-Application (PA)</p> <p><input type="checkbox"/> Minor Use Permit (MUP)</p> <p><input checked="" type="checkbox"/> Conditional Use Permit (CUP)</p> <p><input type="checkbox"/> Planned Development Permit (PDP)</p> <p><input type="checkbox"/> Minor Modification (MM)</p> <p><input type="checkbox"/> Variance (VA)</p> <p><input type="checkbox"/> Boundary Adjustment/Lot Merger (BA)</p> <p><input type="checkbox"/> Tentative Map (TM) - 5 or more lots</p> <p><input type="checkbox"/> Other _____</p>	<p><input type="checkbox"/> Tentative Parcel Map (TPM) - 4 or fewer lots</p> <p><input type="checkbox"/> Certificate of Compliance (CC)</p> <p><input type="checkbox"/> Zoning Amendment (ZA)</p> <p><input type="checkbox"/> Specific Plan Amendment (SPA)</p> <p><input type="checkbox"/> General Plan Amendment (GPA)</p> <p><input type="checkbox"/> Modification of _____</p> <p><input type="checkbox"/> Time Extension for _____</p> <p><input type="checkbox"/> Appeal of _____</p> <p><input type="checkbox"/> Substantial Conformance Review of _____</p>
<p>APPLICANT: Christopher O'Neal Williams PHONE: (619) 847-8264</p> <p>ADDRESS: 6257 Thorn St FAX:</p> <p style="text-align: center;">San Diego, CA 92115 EMAIL: chris@xmgmedia.com</p>	
<p>PROPERTY OWNER: MATTAR FAMILY TRUST OF 1990 PHONE: 619-666-9978</p> <p>ADDRESS: 4395 Alta Mira Dr. FAX:</p> <p style="text-align: center;">La Mesa CA. 91941 EMAIL:</p>	
<p>CONTACT PERSON: Abhay Schweitzer PHONE: (619) 940-5814</p> <p>ADDRESS: 3956 30th Street FAX:</p> <p style="text-align: center;">San Diego, CA 92104 EMAIL: abhay@techno-us.com</p>	
<p><small>*If applicant or property owner is a trust, partnership, or corporation, please attach record(s) of ownership listing all trustees, partners, or officers, as applicable.</small></p>	
<p>PROJECT NAME: NORTH AVE. MMD</p> <p>PROJECT ADDRESS: 6915-35 North Ave, Lemon Grove, CA. 91945</p> <p>ASSESSOR PARCEL #: 479-013-03-00 SITE ACREAGE:</p>	
<p>DETAILED DESCRIPTION OF PROPOSED PROJECT USE, STRUCTURE, AND IMPROVEMENT:</p> <p>The proposed project consists of an existing single story commercial building with an approximate square footage of 2,156 sf., to be converted into a Medical Marijuana Dispensary located at 6915-35 North Ave., Lemon Grove CA. 91945.</p> <p>The scope of the project is to include interior remodel of the existing structure with non-structural and non-loadbearing walls;</p> <p>Site modifications to include parking lot re-stripping, pedestrian access from the parking lot and existing right of way, and miscellaneous site improvements such as lighting, fencing and security cameras</p>	

ZC17-0016

Rev. November 2015

Attachment E

[illegible]



CITY OF LEMON GROVE "Best Climate On Earth"
Development Services Department

Date: June 13, 2017

Pick Axe Holdings, LLC
Attn. Christopher Williams
6257 Thorn St.
San Diego, CA 92115

Mattar Family Trust of 1990
4395 Alta Mira Drive
La Mesa, CA 91941

SUBJECT: Denial of Zoning Clearance Application ZC1-700-0016 for property located at 6915 North Avenue, in the City of Lemon Grove (APN: 479-013-03-00).

Christopher Williams,



On June 1, 2017, staff received the subject application to establish a medical marijuana dispensary (MMD) at the subject property in the City of Lemon Grove. The application has been denied for the following reasons, which may not be all inclusive:

- The property is located within 1,000 feet of a State-licensed small family daycare home.

In order for staff to process a conditional use permit application for a MMD, the application must include all of the information required by Chapter 17.32 of the Lemon Grove Municipal Code, as well as the items listed on the City's MMD Planning Permit Checklist. Additionally, the location of the proposed MMD must comply with the zoning requirements and distance restrictions contained within Chapter 17.32. If any of the required items are missing, or if the proposed location does not meet the zoning requirements and distance restrictions, then staff cannot process a conditional use permit application. Please review the requirements of Chapter 17.32 and the MMD Planning Permit Checklist prior to submitting another application. Please also verify that the site chosen meets the distance restrictions established by Chapter 17.32. Staff's decision to deny this application may be appealed to the Lemon Grove City Council pursuant to Lemon Grove Municipal Code, Section 17.28.020(I). Appeals must be filed in writing within 10 calendar days of the date on this denial letter and must include a filing fee of \$75.00. Appeals must be filed using forms provided by the Development Services Department.

Respectfully,

David De Vries, Development Services Director

	APPEAL APPLICATION & REQUEST FOR PUBLIC HEARING
Community Development Department / Planning Division 3232 Main Street, Lemon Grove, CA 91945 Phone: 619-825-3805 Fax: 619-825-3818 www.ci.lemon-grove.ca.us	
APPLICANT: Pick Axe Holdings, LLC c/o Gina Austin PHONE: 619-924-9600	
ADDRESS: 6257 Thorn St. FAX:	
San Diego, CA 92115 EMAIL: gaustin@austinlegalgroup.com	
CASE/PROJECT NUMBER: ZC1-700-0016	
DECISION /CONDITIONS OF APPROVAL BEING APPEALED (INCLUDE CONDITION ITEM NUMBERS): Applicant is appealing staff's determination that the property is located within 1,000 feet of a small family daycare home.	
SPECIFIC REASON(S) FOR APPEAL OR REQUEST FOR PUBLIC HEARING: The denial letter does not state the licensed daycare home and therefore has not put the applicant on notice for the reason for denial. Further, however, the applicant will provide additional details once the specific sensitive use has been identified by the City.	
Attach additional sheets if necessary.	
 Applicants Signature	06/21/17 Date
TO BE COMPLETED BY PLANNING STAFF	
FILE #(s): AA1-700-0004	
DATE: 6/21/17	
FEES: \$75 RECEIPT #:	
COMMENTS and/or CONDITIONS:	

Customer # → 052190
 Lot # → 045868

Attachment G

Austin Legal Group
LAWYERS
3990 OLD TOWN AVE, STE A-112
SAN DIEGO, CA 92110

LICENSED IN
CALIFORNIA, ARIZONA & HAWAII
TELEPHONE
(619) 924-9600

FACSIMILE
(619) 881-0045

May 31, 2017

CITY OF LEMON GROVE

JUN 01 2017

DEVELOPMENT SERVICES

Writer's Email:
gaustin@austinlegalgroup.com

City of Lemon Grove
Development Services
3232 Main Street
Lemon Grove, CA 91945

Re: **6915-6935 North Ave**, Application for Medical Marijuana Dispensary (MMD)

To Whom It May Concern:

Austin Legal Group, APC ("ALG") represents the applicant for a MMD located at 6915-6935 North Ave, Lemon Grove ("MMD Location"). The purpose of this letter is to provide further clarification as to why the MMD Location is not within 1000' of a Protected Use as defined by section 17.32.090 of the Lemon Grove Municipal Code (the "Code"). It is our professional opinion that there are no Protected Uses within 1000' of the MMD Location.

While the MMD Location was not within the approved highlighted properties on the City's most recent map, as explained in more detail below, there are no Protected Uses within 1000' of the MMD Location. Further, the City supplied a list of Protected Uses in response to a public records request ("City's Response"). The City's Response is attached hereto as Exhibit 1. No Protected Uses were identified in the City's Response within 1000' of the MMD Location. (See Exhibit 2).

The applicant is requesting the City process the CUP application for the MMD at 6915-6935 North Ave all the way through to City Council Hearing despite the MMD Location being identified within the buffer area identified on the City's zoning map.

Exhibit 3, attached hereto, identifies the 1000' radius around the MMD Location on the assessor parcel map. Exhibit 4, attached hereto, identifies the 1000' radius around the MMD Location on a graphic map.

None of the Protected Uses provided by the City in response to the Public Records request are within 1000' of the MMD Location. The nearest Protected Use is located at 7164 Broadway, approximately 1,315' property line to property line without consideration of natural or constructed barriers. (See Exhibit 5.)

City of Lemon Grove
March 23, 2017
Page 2

In further support, this office conducted an independent analysis of the 1000' area surrounding the MMD Location and, as explained below, no Protected Uses were identified.

There are no protected uses within 1000' to the north or northwest of the MMD Location. The nearest neighborhood to the north starts with King Street, La Mesa. However, Route 94 is a constructed barrier that impedes direct physical access between the properties. There are no properties immediately north or northwest of the MMD Location which is not separated by the Route 94 Freeway. The municipal code requires that the City take into account "natural topographical barriers and constructed barriers that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access" (Lemon Grove Municipal Code § 14.32.090 (B).) Due to the Route 94 as a constructed barrier, the most direct route around the barrier is approximately 1,794 ft. (See Exhibit 6.)

Similarly, based upon the City's Response, public records, and business tax certificates there are also no Protected Uses to the west of MMD Location. To the west of the MMD Location there is a commercial shopping center which includes a wide variety of commercial businesses. The 1000' point to the west is the Rubio's Coastal Grill, located in the Marketplace at the Grove Shopping Center at 3406 College Ave. Located within the 1000' between the MMD Location and Rubio's Coastal Grill is the Route 94 freeway.

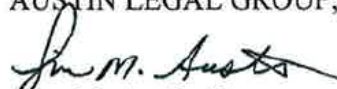
To the east of the MMD Location there is a commercial shopping center that does not contain any Protected Uses. The extent to which 1000' to the east of the MMD Location extends is to Albertsons located at 7090 Broadway. Based on the APN and Parcel IDs for schools, parks, playgrounds, alcohol and substance rehabilitation facilities, and licensed day care facilities, there are no Protected Use facilities within 1000' east of the MMD Location.

Finally, business tax certificates, public records, the City's Response do not identify any Protected Uses the south and southeast of the MMD Location. The extent to which 1000' south of the MMD Location extends to the Lemon Grove Apartment Complex, Hillside Terrace Apartments, located at 3262 College Place. Located within the 1000' south between the MMD Location and the apartment complex includes several commercial entities.

* * *

For the reasons above, we are requesting the City of Lemon Grove find that there are no Protected Uses within 1000' of the MMD Location and immediately issue the Zoning Clearance for the MMD Location.

Sincerely,
AUSTIN LEGAL GROUP, APC


Gina M. Austin, Esq.

Attachment G

PROTECTED USES

School Age Child Care Center (CDSS Website; Facility Search)

CHRISTIAN CHURCH OF LEMON GROVE SCHOOL AGE PROG. Licensed	6970 SAN MIGUEL AVE	91945
CHRISTIAN CREATIVE LEARNING ACADEMY/SCHOOL-AGE Licensed	2920 MAIN STREET	91945
EAST COUNTY FAMILY YMCA GOLDEN	7885 GOLDEN AVE.	91945 Licensed
MERRY GO ROUND LEARNING CENTER - SCHOOL AGE Licensed	2749 LEMON GROVE AVENUE	91945

Child Care Center Preschool (CDSS Website; Facility Search)

AKA HEAD START - SAN MIGUEL	7059 SAN MIGUEL	91945	Licensed
CHRISTIAN CHURCH OF LEMON GROVE PRESCHOOL Licensed	6970 SAN MIGUEL AVENUE	91945	
CHRISTIAN CREATIVE LEARNING ACADEMY	2920 MAIN ST	91945	Licensed
DISCOVERY LEARNING CENTER	1515 SKYLINE DRIVE	91945	Licensed
LEMON GROVE SCHOOL DISTRICT-GOLDEN AVE PRESCHOOL Licensed	7885 GOLDEN AVENUE	91945	
LEMON GROVE SCHOOL DISTRICT-MONTEREY HEIGHTS P.S. Licensed	7550 CANTON DRIVE	91945	
LEMON GROVE SCHOOL DISTRICT-MOUNT VERNON PRESCHOOL Licensed	8350 MOUNT VERNON STREET	91945	
LEMON GROVE SCHOOL DISTRICT-SAN ALTOS PRESCHOOL Licensed	1750 MADERA STREET	91945	
LEMON GROVE SCHOOL DISTRICT-SAN MIGUEL PRESCHOOL Licensed	7059 SAN MIGUEL AVENUE	91945	
LIGHTHOUSE CHRISTIAN PRESCHOOL	1345 SKYLINE DRIVE	91945	Licensed
MERRY GO ROUND LEARNING CENTER	2749 LEMON GROVE AVENUE	91945	Licensed
SHILOH CHRISTIAN ACADEMY	2770 GLEBE ROAD	91945	Licensed
ST. JOHN OF THE CROSS PRESCHOOL	8175 LEMON GROVE WAY	91945	Licensed

Attachment G

Large Family Daycare (up to 14 kids) (CDSS Website; Facility Search)

AHMED, FATHA & MOHAMED FAMILY CHILD CARE	Unavailable	91945	Licensed
ALVAREZ, VERONICA & JUAN FAMILY CHILD CARE	Unavailable	91945	Licensed
DELGADO, ALICIA & JOSE FAMILY CHILD CARE	Unavailable	91945	Licensed
DELGADO, GLORIA FAMILY DAY CARE	Unavailable	91945	Licensed
GEORGE, CARRIE FAMILY CHILD CARE	Unavailable	91945	Licensed
HUSSEN, FARTUN FAMILY CHILD CARE	Unavailable	91945	Licensed
JOHNSON, KATHLEEN FAMILY DAY CARE	Unavailable	91945	Licensed
LEDEZMA, LORENZA FAMILY CHILD CARE	Unavailable	91945	Licensed
MAXWELL, REBECCA & DANIEL FAMILY CHILD CARE	Unavailable	91945	Licensed
MILLER, O & CARTER, I FAMILY CHILD CARE	Unavailable	91945	Licensed
SAMBRANO, LAURA FAMILY CHILD CARE	Unavailable	91945	Licensed
TANABE, SYLVIA FAMILY DAY CARE	Unavailable	91945	Licensed

Drug Treatment Facilities (Google Search)

Alano Club	6901 Central Avenue
McAllister Institute	2049 Skyline Drive

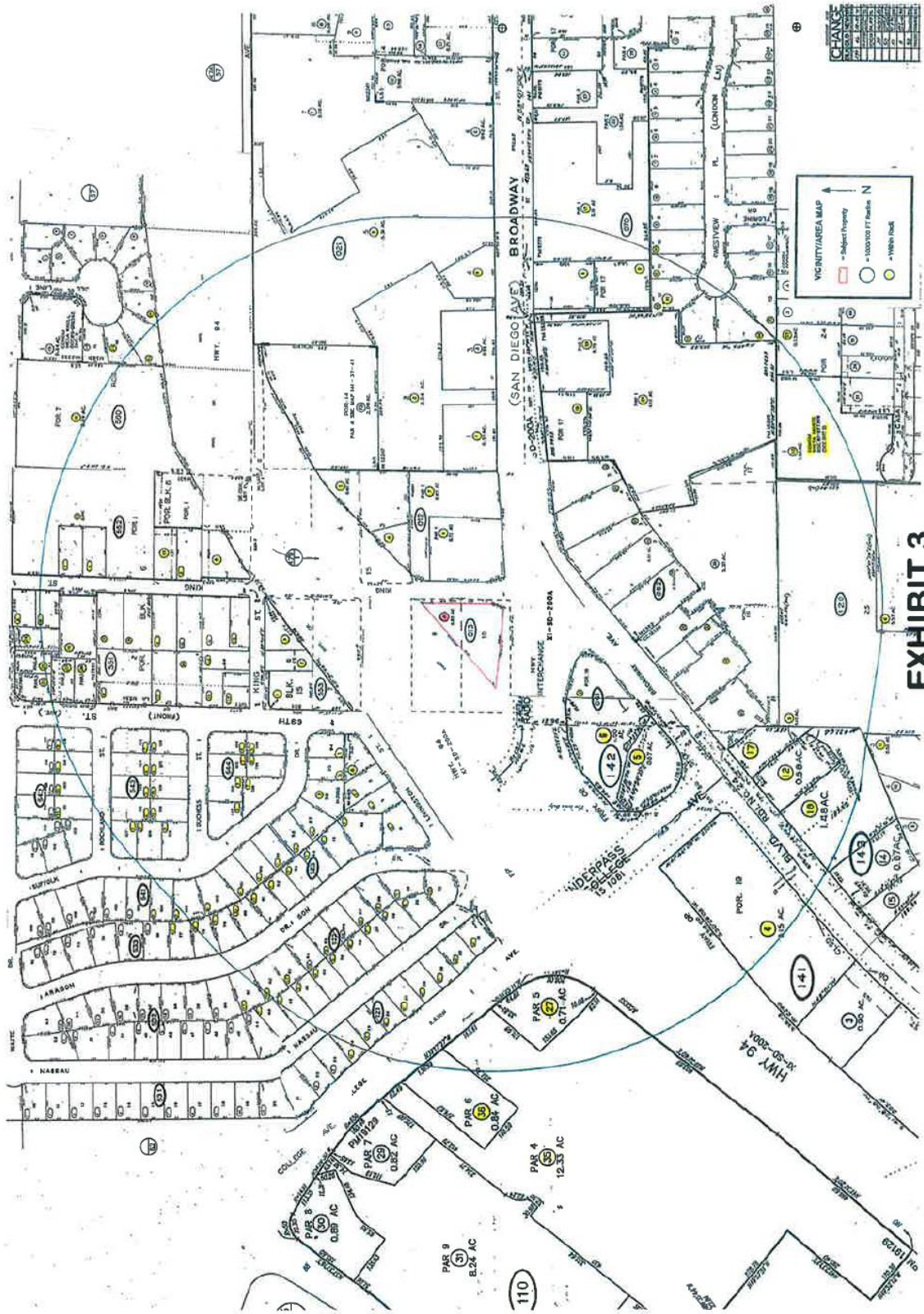
Adult Daycare

HEALTHY OPPORTUNITIES PROGRESSIVE EDUCATION	3225 OLIVE ST.	91945	Licensed
LINK CENTER, THE	7944 GOLDEN AVE	91945	Licensed

Attachment G



EXHIBIT 2



Attachment G



EXHIBIT 4

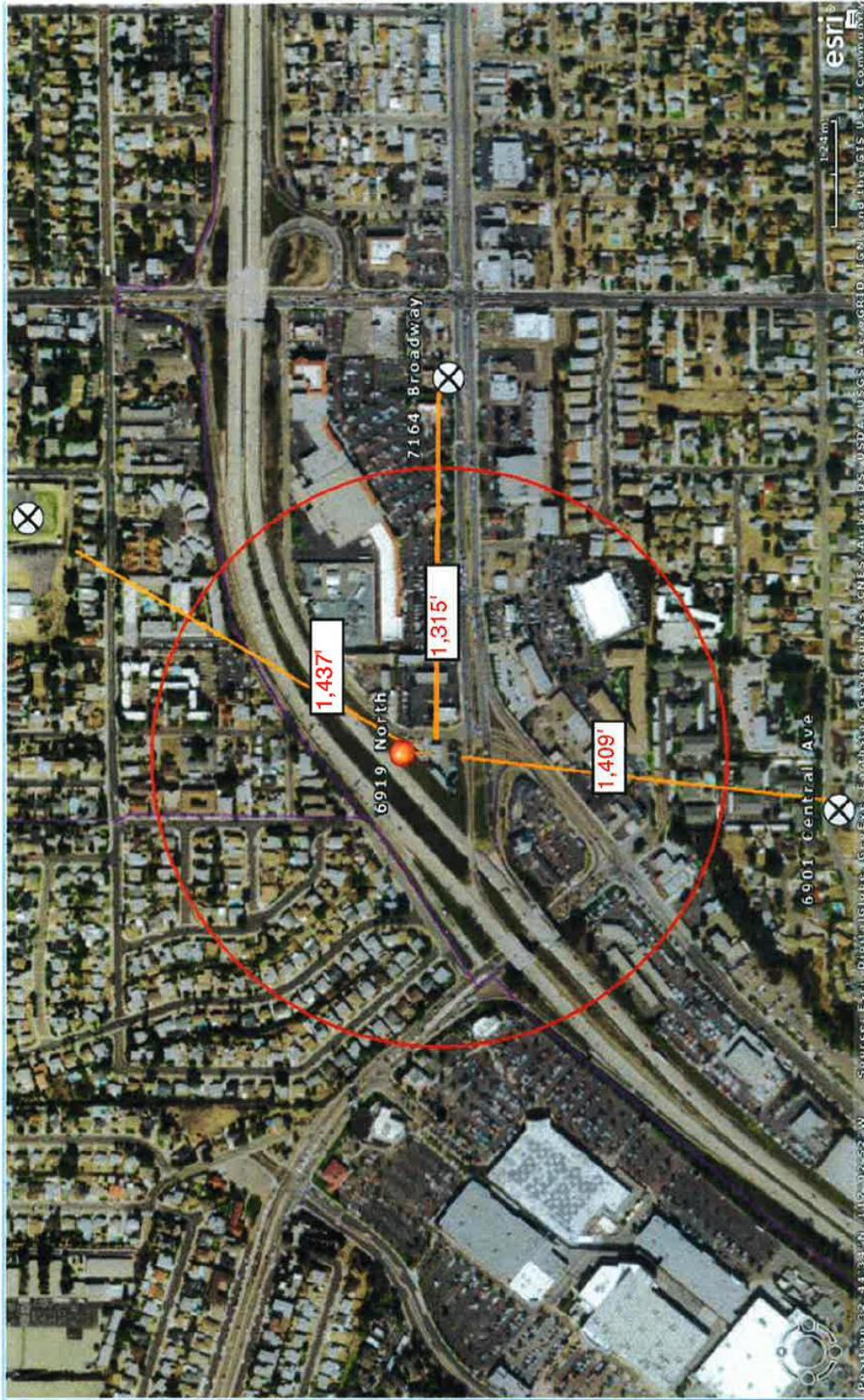


EXHIBIT 5

Attachment G

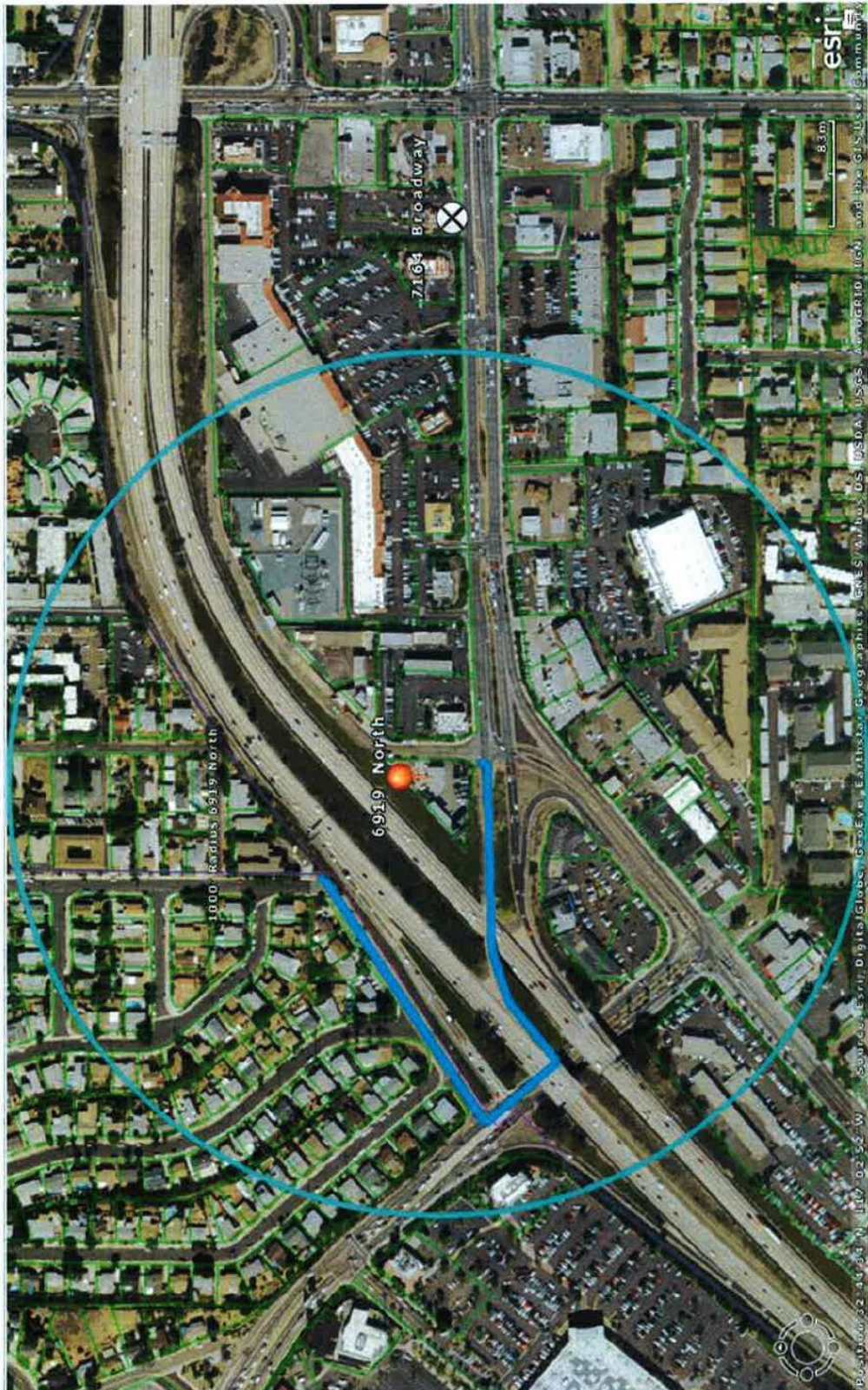


EXHIBIT 6

Austin Legal Group
LAWYERS
3990 OLD TOWN AVE, STE A-112
SAN DIEGO, CA 92110

LICENSED IN CALIFORNIA & HAWAII
TELEPHONE
(619) 924-9600

FACSIMILE
(619) 881-0045

Writer's Email:
gaustin@austinlegalgroup.com

August 14, 2017

City of Lemon Grove
City Council
3232 Main Street
Lemon Grove, CA 91945

Re: **6915 North Ave.**, Appeal of Zoning Clearance Application ZC1-700-0016

Dear City Council Members:

Austin Legal Group, APC represents Pick Axe Holdings, LLC and Christopher Williams (the "Applicant") for a MMD located at 6915 North Avenue, Lemon Grove ("MMD Location"). This letter is intended to provide additional support for the appeal filed by the Applicant for the denial of Zoning Clearance application ZC1-700-0016.

As discussed below, good grounds exist for this appeal, namely that staff's decision was based on an erroneous application of the law and the findings underpinning the denial of the zoning clearance are not supported. Accordingly, the City Council should grant the Applicant's appeal and reverse staff's decision to deny the zoning clearance.

FACTUAL BACKGROUND

The Applicant submitted an application for Zoning Clearance, ZC1-700-0016, in accordance with the City's rules and regulations on June 1, 2017 ("Application"). In connection with the Application, the Applicant submitted an additional letter of support clarifying that no protected uses are within 1,000' of the Applicant's proposed project. (See Attachment G attached to the staff report.) On June 13, 2017, the City denied ZC1-700-0016 stating that "the property is located within 1,000 feet of a State-licensed small family daycare home."

On June 21, 2017, the Applicant appealed staff's denial based upon the City's failure to put the applicant on notice of the location of the alleged small family daycare home. On July 25, 2017, the City informed the Applicant that the specific protected use affecting the proposed project are "three licensed family daycare facilities located at 7106 Westview Place."

The Applicant has been unable to verify that any daycare facility is actually operating at 7106 Westview place despite multiple visits to the address. A confidential report by an independent private investigator was unable to identify the presence of any children.

Attachment G

City of Lemon Grove
August 14, 2017
Page 2

ARGUMENT

I. STAFF'S DECISION TO DENY THE ZONING CLEARANCE WAS BASED ON A MATERIALLY ERRONEOUS INTERPRETATION OF THE PLAIN LANGUAGE OF THE CITY'S MUNICIPAL CODE

The Lemon Grove Municipal Code ("LGMC") requires a 1,000' separation from other dispensaries (Regulated Uses) as well as public parks, playgrounds, licensed day care facilities, schools, and alcohol and substance abuse centers (Protected Uses). "Measurement is made between the closest property lines of the Premises in which the Regulated uses and Protected Uses are located." (LGMC § 17.32.090 (B).)

LGMC section 17.32.090 further states "The measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access [emphasis added]."

In California, in the interpretation of any statute, it is mandated by both statute and case law that the intention of the legislature in passing the statute is to be pursued, if possible. (See, Code of Civil Procedure section 1859; See also, *Smith v. Superior Court* (2006) 39 Cal.4th 77, 83.) Generally, legislative intent may be derived from (1) intrinsic evidence, which relies on the language and structure of the statute, and (2) extrinsic evidence, which usually looks to the legislative history. However, intrinsic evidence should be examined first, and extrinsic evidence examined to the extent there is doubt as to intent of the legislature from an intrinsic analysis. (See *Koenig v. Johnson* (1945) 71 Cal.App.2d 739; *People v. Woodhead* (1987) 43 Cal.3d 1002, 1008.) As such, the starting point for determining legislative intent should always be the plain language of the statute, where words should be given their usual and ordinary meaning and read in the context of the statutory scheme. (*Hunt v. Superior Court* (1999) 21 Cal. 4th 984, 1000.)

In the case at hand, the Development Services Director abused his discretion when he failed to take into account the natural topographical barriers and constructed barriers between the alleged daycare facilities and the proposed MMD location. The City suggests that the licensed daycare facilities are approximately 853 feet from the proposed MMD Location (see staff report page 31.) However, staff inaccurately measured the distance between 6915 North Street and 7106 Westview Place in a straight line without consideration of natural topographical barriers or constructed barriers. When appropriately measured around the natural and constructed barriers the distance is over 3,000'. (See Exhibit "1" attached hereto.)

The plain language of the ordinance does not expressly state or even imply that the distance is to be measured in a straight line. Rather, the plain language is very clear that when there is a barrier the distance shall be measured as the most direct route around the barrier in a manner that establishes direct access. In light of the clearly stated plain language of the ordinance, there is no need to look to legislative intent. It is an abuse of discretion for the City to measure distance between regulated and protected uses in any manner other than around natural and constructed barriers.

A. There Are Significant Natural and Constructed Barriers Between 6915 North Avenue And 7106 Westview Place

When traveling from 6915 North Avenue towards 7106 Westview Place, in the most direct route, the first constructed barrier (not counting the six lanes of traffic along Broadway and Federal Avenue with no cross walk) is the steep slope of vegetation along the south and east side of the parking lot of the Family Resource Center (See Exhibit 2). According to Stephen George of Landscapes West, this vegetation is *Acacia latifolia* and frequently used as a barrier against dust and headlights. Mr. George is a design/build landscape contractor and has frequently installed *Acacia latifolia* as a foot traffic barrier and hillside slope retainer throughout San Diego County.

The second barrier is the 6 foot high chain linked fence topped with at least 3 rows of barbed wire (See Exhibit 3). This fencing surrounds the entirety of the north and west sides of 7106 Westview leaving the only access via the south and east sides of the property from Westview Place. (See Exhibit 4.)

In accordance with the requirement of LGMC to follow the most direct route around the barrier in a manner that establishes direct access, 7106 Westview Place must be accessed from the street on Westview because the chain link and barbed wire fencing continues along the north side of all the houses on Westview Place. The most direct route from 6914 North to 7106 Westview Place is to travel east on Broadway and then South on Massachusetts and then West on Westview (See Exhibit 1). There is simply no other method to access 7106 Westview Place. This path of travel is over 3,000.

B. 7106 Westview Does Not Have An Operating Daycare Facility

The staff report indicates that “staff contacted the three family daycare home operators via a phone call and written letter and informed them that their locations would be disclosed to the appellant” (See staff report pg 4.) Noticeably missing from the staff report is confirmation from the alleged daycare operators that childcare is actually occurring at 7106 Westview and/or that children are present.

LGMC section 17.08.003 defines Licensed Day Care Facilities as follows:

“Day care” means a facility, **licensed and equipped as required by law**, which provides non-medical care and supervision for periods of less than twenty-four hours. This term shall include nursery schools.

1. “Small family day care” means day care that is provided in a single-family dwelling for up to eight people in accordance with Section 1597 of the California Health and Safety Code. The day care provider shall reside in the home.
2. “Large family day care” means day care that is provided in a single-family dwelling for up to fourteen people in accordance with Section 1597 of the California Health and Safety Code. The day care provider shall reside in the home.

Attachment G

City of Lemon Grove
August 14, 2017
Page 4

The plain language of LGMC section 17.08.003 requires that non-medical care and supervision is actually occurring on site. It would be nonsensical to suggest that a home that at one point obtained a license from the State of California but does not actually care for children is a protected use.

Here, there are three units side-by-side that the City states at some point received a license from the state. The Applicant hired a private investigator to determine whether or not childcare activities were occurring at any of the units located at 7103 Westview. In his confidential report to the Applicant, the investigator stated that "No children or signs of a daycare were present." The Applicant's own due diligence confirmed that no active childcare activities are occurring at the property located at 7103 Westview.

II. STAFF'S OBJECTION TO PICK AXE HOLDINGS AS THE APPELLANT IS WITHOUT MERIT

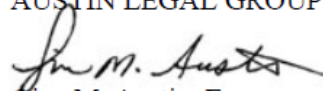
The City letter dated July 25, 2017 states that "The City will provide this hearing but objects on the basis that Pick Axe Holdings LLC, the entity that lodged the appeal, is not the party who filed the Zoning Clearance Application who is Christopher O Williams." This objection is without merit. The City addressed its initial June 13, 2017 zoning clearance denial to Pick Axe Holdings despite its claim that Christopher O. Williams was the applicant. Similarly, the City addressed its July 25, 2017 letter to Pick Axe Holdings.

While the initial application listed Christopher O'Neal Williams as the Applicant, it is simply a scrivener's error that Pick Axe Holdings was left off of the Planning Permit Application. Christopher Williams is the incorporator and sole officer and director of Pick Axe Holdings as evidenced by the additional documents submitted in connection with the Planning Permit Application. The application included all of the relevant documentation to identify the corporate entity of Pick Axe Holdings as the applicant including: Articles of Organization, Operating Agreement, EIN, Statement of Information, Written Action of Manager, BOE Permit. In addition, the Applicant submitted a letter identifying the Director and Community Liaison for Pick Axe Holdings would be Christopher Williams.

* * *

For the reasons stated above, the Applicant respectfully requests the City Council reverse the denial of the Zoning Clearance.

Sincerely,
AUSTIN LEGAL GROUP, APC



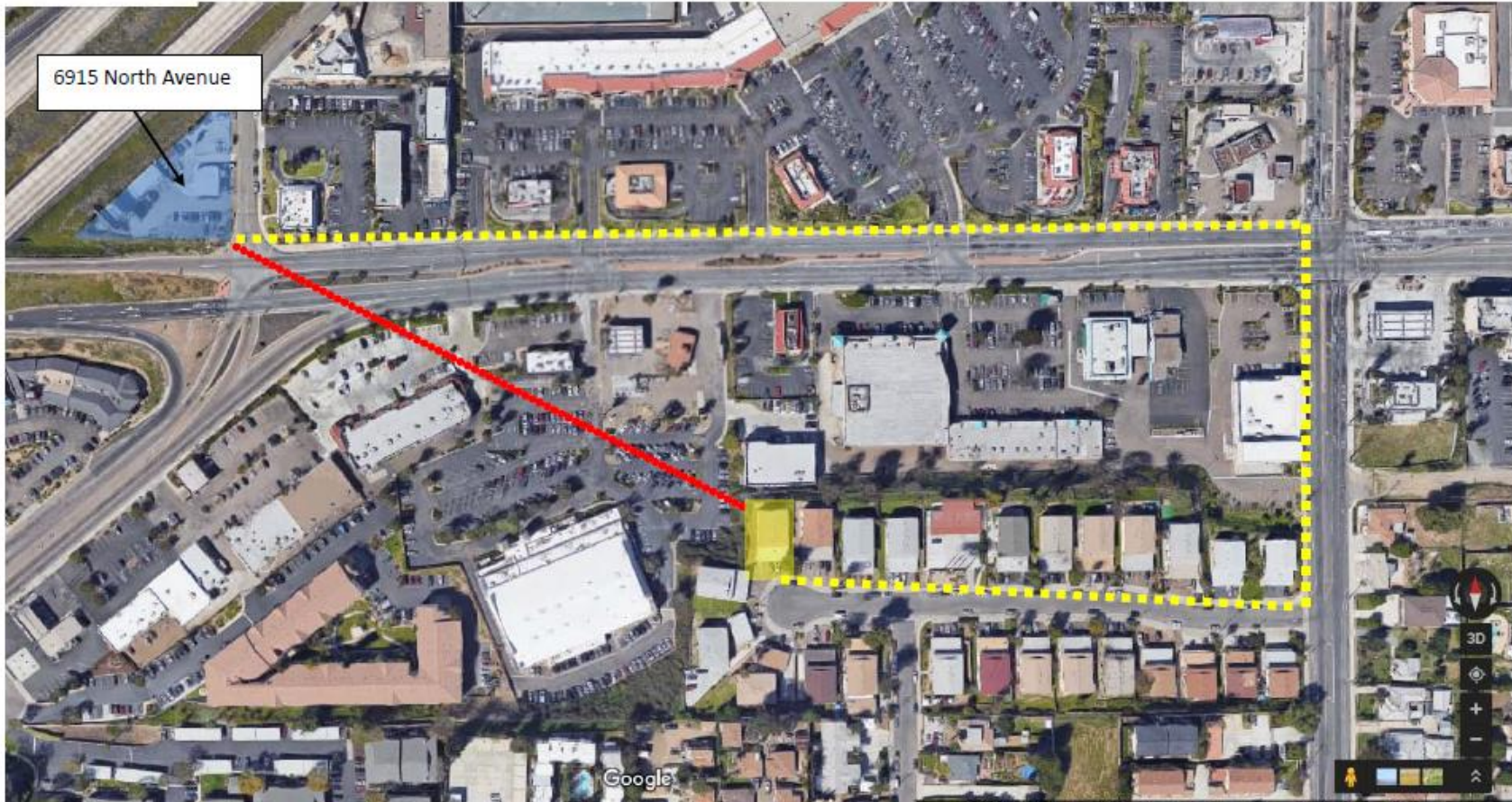
Gina M. Austin, Esq.

cc: Development Services Director

EXHIBIT 1
Map

Attachment G

EXHIBIT 1



..... Approximately 853'

..... Approximately 3,000'

EXHIBIT 2
Photographs of Steep Slope

Attachment G





Attachment G

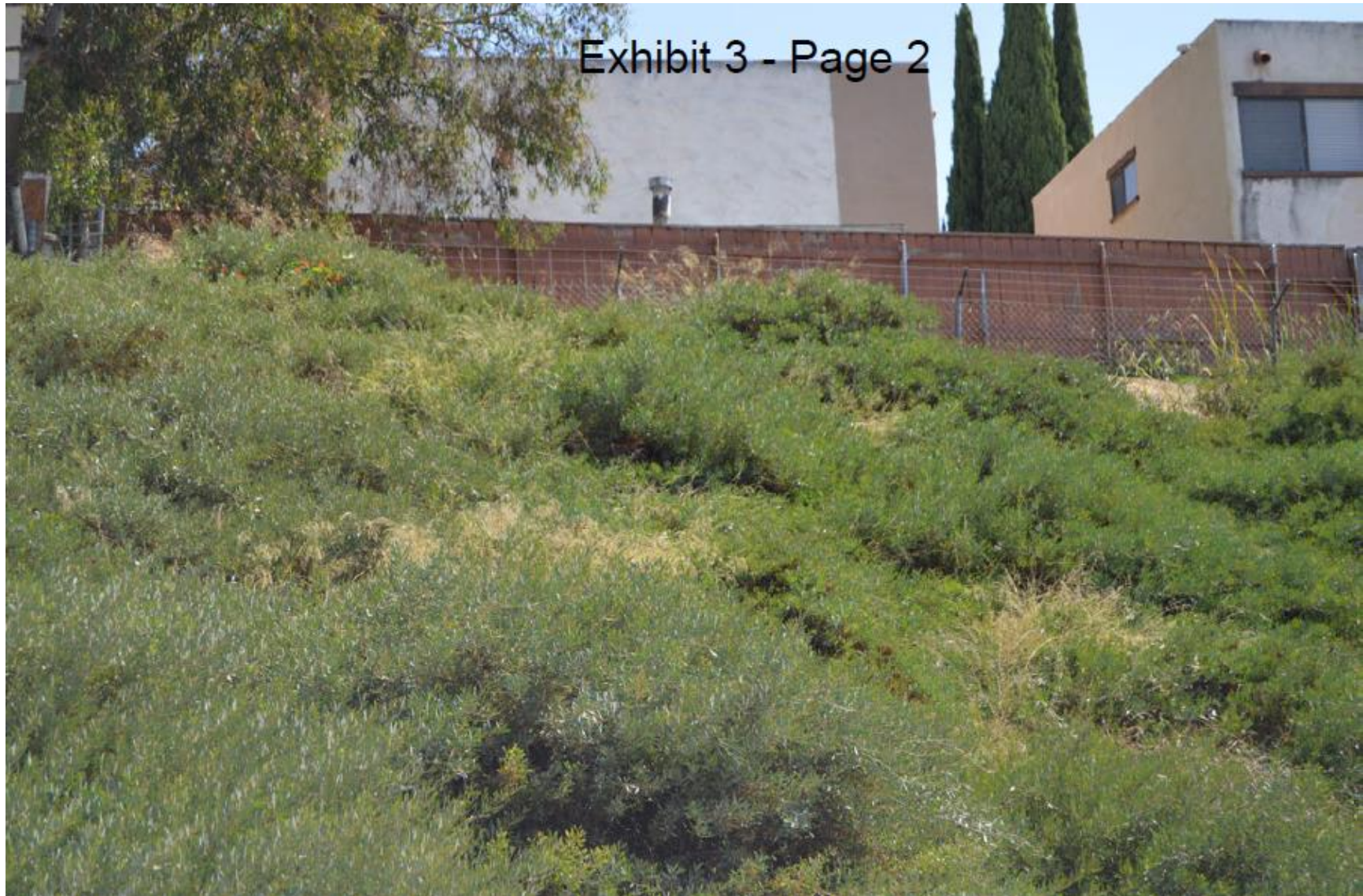


EXHIBIT 3

Photograph of Barbed Wire Fencing

Attachment G





Attachment G

EXHIBIT 4 Additional Photographs

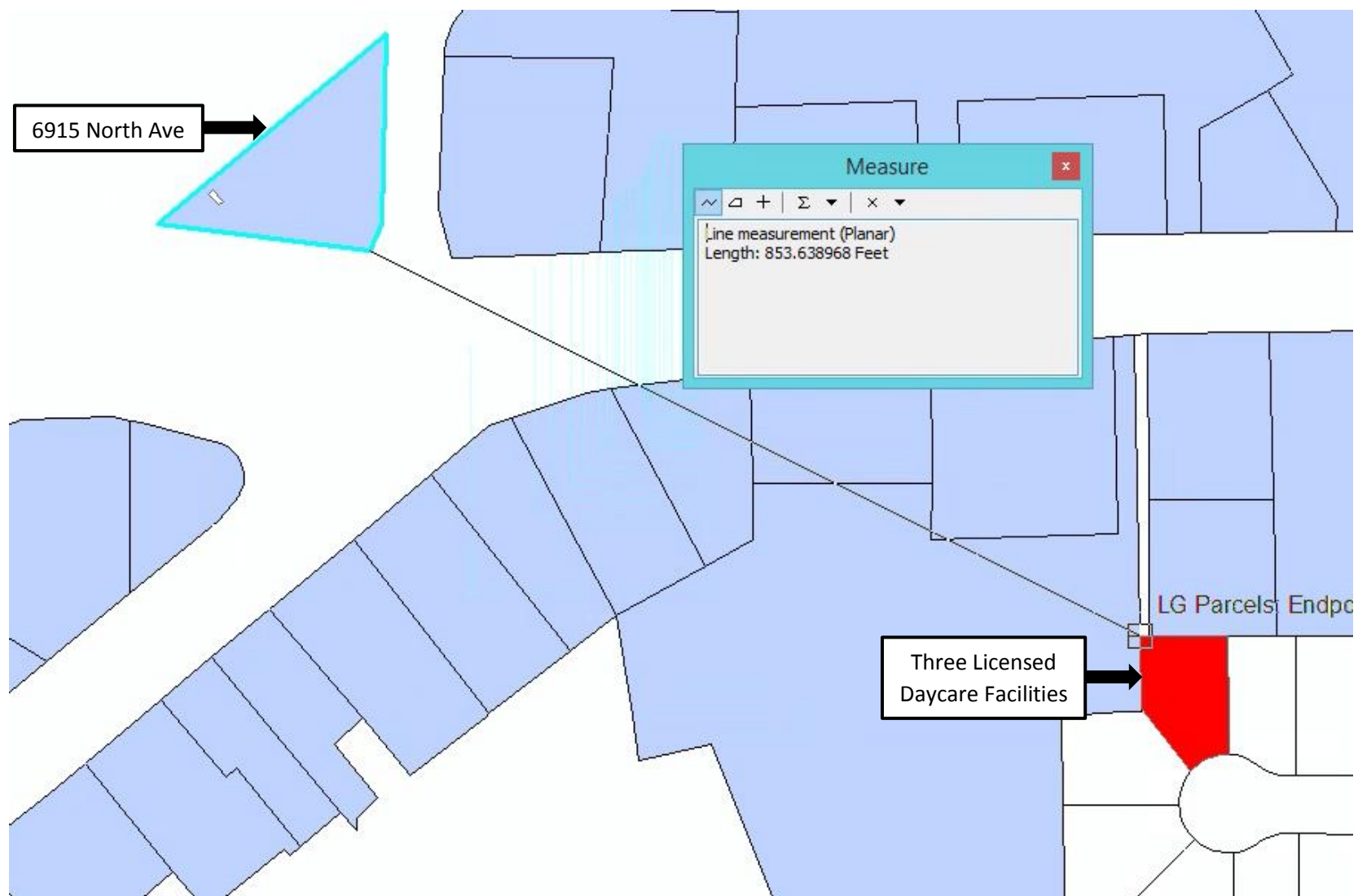
Exhibit 4 - Page 1



Attachment G

Exhibit 4 - Page 2





Source: City of Lemon Grove GIS database 2017



CITY OF LEMON GROVE
Development Services Department

"Best Climate On Earth"

Date: July 25, 2017

Pick Axe Holdings, LLC
Attn. Christopher Williams
6257 Thorn St.
San Diego, CA 92115

Mattar Family Trust of 1990
4395 Alta Mira Drive
La Mesa, CA 91941

SUBJECT: Appeal hearing for denial of Zoning Clearance application ZC1-700-0016 for property located at 6915 North Avenue, in the City of Lemon Grove (APN: 479-013-03-00).

Christopher Williams,

On June 1, 2017, staff received the subject application to establish a medical marijuana dispensary (MMD) at the subject property in the City of Lemon Grove. On June 13, 2017, staff denied the application because the property is located within 1,000 feet of a State-licensed daycare facility. In order to provide a full and open opportunity for you to understand the reason staff denied your zoning clearance permit, and to allow you to respond accordingly, we wish to inform you that the specific protected uses affecting your project site are three licensed family daycare facilities located at 7106 Westview Place. By measuring georeferenced parcel boundary information, we have determined that your property at 6915 North Avenue is located 853 feet northwest of the daycare facilities, and is therefore ineligible for MMD approval.

On June 21, 2017, staff received an appeal of its decision to deny the application. Staff's decisions are subject to appeal pursuant to the provisions of the Lemon Grove Municipal Code, Section 17.28.020(l). The Lemon Grove City Council will consider the appeal and make a determination to grant or deny the appeal at a public hearing to be conducted on August 15, 2017.

The City will provide this hearing but objects on the basis that Pick Axe Holdings LLC, the entity that lodged the appeal, is not the party who filed the Zoning Clearance Application who is Christopher O. Williams. The City preserves this objection for the appeal hearing and for the defense of any writ that may be filed in Superior Court.

In addition, should you need additional time to prepare for the hearing you can request a continuation of the appeal hearing to the next City Council hearing.

The staff report will be available to the public in the afternoon on August 10, 2017 (<http://www.lemongrove.ca.gov/departments/mayor-council/current-city-council-agenda>).

Attachment I

If you have any additional supporting material you would like to submit for the appeal, please provide that information to staff at your earliest convenience.

Respectfully,

A handwritten signature in blue ink, appearing to read 'D. De Vries', with a long horizontal flourish extending to the right.

David De Vries, Development Services Director



Frequently Asked Questions

Where can I find the facility definitions?

See the Glossary link at the top.

Where can I find out more about how facilities are regulated in California?

Please visit the Community Care Licensing (<http://www.cclid.ca.gov/>) website.

What is the best way to search?

Select just one or a few of the available search terms. You will be able to filter your search on the Results screen.

Where can I find the definitions of the facility types?

The definitions for the facility types can be found on the Glossary (<http://www.cclid.ca.gov/res/html/glossary.htm>) page.

I am looking for Foster Family Homes. Why can't I find them.

The publication of names and addresses of Foster Family Homes is restricted by law and considered confidential.

Why can't I find the addresses for Small Family Child Care homes (less than 8 children)?

Because these are Child Care providers' homes, the publication of addresses is restricted. To find Small Family Child Care home providers in your area, contact the Resource and Referral Network (http://www.rnetwork.org/find_child_care) or call 1-800-KIDS-793. The Network can also assist you in searching for the right child care for your child and can provide you with addresses of facilities in your area.

Why can't I see or search on street addresses for Large Family Child Care Homes?

For Large Family Child Care Homes, you can still search using the City, Zip and County options. To obtain the address of a Large Family Child Care Home, please contact either the State Licensing Office, the Resource and Referral Network (http://www.rnetwork.org/find_child_care) or call 1-800-KIDS-793.

Why can't I get a list of Small Family Child Care homes?

Information related to Small Family Child Care homes is restricted by law. Small Family Child Care home information is available to provide consumer information to parents with children in care and to parents seeking child care from a local child care home.



CITY OF LEMON GROVE
Development Services Department

"Best Climate On Earth"

February 9, 2017

Michelle Hood, Office Services Supervisor I
Community Care Licensing
San Diego Child Care Regional Office
7575 Metropolitan Drive #110
San Diego, CA 92108

RE: Request for List of Small Family Daycare Homes with Addresses

Michelle:

On November 8, 2016, voters in Lemon Grove passed Measure V, which removed the City's prohibition of medical marijuana dispensaries (dispensaries). Measure V (copy attached) allows dispensaries to be established by conditional use permit (CUP) subject to certain distance restrictions. One such distance restriction states that no dispensary shall be permitted within 1,000 feet of licensed daycare facilities. Therefore, City staff needs to identify the location of family daycare homes both inside the City boundaries and outside the City boundaries within 1,000 feet. The applicable postal codes we need information for are 91945, 91977, 91941, and 92114.

Our staff is sensitive to the need for privacy at family daycare homes. Therefore, if provided we do not intend to share this information with the general public. Our goal is to use the information to prepare a map for staff use only.

Sincerely,

David DeVries, AICP
Director of Community Development
City of Lemon Grove

Attachments:

1. Measure V



STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES



February 21, 2017

Mr. David DeVries
City of Lemon Grove
3232 Main Street
Lemon Grove, CA 91945

RE: Request for Confidential Child Care Facilities Data

This letter is in response to your letter request to obtain a copy of the confidential Small Family Child Care Home list, which are in-home child care facilities with 8 or fewer children enrolled, as well as the Large Family Child Care Home list, which are in-home child care facilities with 9-14 children enrolled.

In your letter, you expressed that the need for this list is to ensure that those applying for medical marijuana dispensaries are not located within 1,000 feet of a licensed daycare facility.

For your information, Health and Safety Code Section 1596.86(b) requires the Department of Social Services (DSS) to maintain the personal privacy of small family child care homes and prevent the use of lists containing their names, addresses, and other identifying information, except for administering the licensing program, facilitating the placement of children, and providing the names and addresses to resource and referral agencies funded by the Department of Education, and food and nutrition programs also funded by the Department of Education.

In consideration of your reasoning for requesting the Small Family Child Care Home list, and Child Care Licensing's administrative responsibility to protect the health and safety of its clients in care, it appears your request is in line with the mandate of the above statute.

I am including as an attachment to this letter, a copy of the fee schedule that contains the fee amount for the Small Family Child Care Home list. It also contains instructions for where to send your check.

Steven Blount of our Information Systems Division will receive a copy of this letter, so he will be aware that you have been approved to receive a copy of the list. It should be understood that the small family child care home list is to remain only in your possession, and not shared.

Thank you for your communication. If you have any questions or additional concerns, you may contact Jenni Fong, System Review Analyst at (916) 651-0264.

Sincerely,


Sheffa Fleming, Manager
Child Care Program System Administration and Support Unit

Attachment

cc: Steven Blount, ISD

Attachment M

Slope West of Daycare Facilities within 1,000 feet of 6915 North Ave. dated August 14, 2017



Attachment M



Attachment M

